PROGRESS OF THE LAW.

As Marked By Decisions Selected from the Advance Reports.

ACCORD AND SATISFACTION.

Payment: Attorney-at Law

The Superior Court of Pennsylvania decides in *Szok* v. *Crown,* 33 Pa. Super. Ct., 612 that where an attorney at law collects a claim for a client, and there is no dispute as to the amount collected, but the attorney arbitrarily fixes the amount of his fee, and gives a check to his client, which recites payment in full, the client may accept and use the check as payment on account, and sue for the balance which he claims that the attorney wrongfully withholds from him. Compare *Washington National Gas Co.* v. *Johnson,* 123 Pa. 576.

BANKRUPTCY.

Liens; Distress

An important holding of the United States Circuit Court of Appeals of the Seventh Circuit appears in *Wilson* v. *Brock & Rankin,* 154 Fed. 343, where it is held that the Bankruptcy Act of 1898 providing that liens obtained through legal proceedings within four months prior to bankruptcy shall be dissolved by the bankruptcy proceedings, relate only to those actions or proceedings taken by creditors who, having no existing lien or right of lien resting in existing contract entered into in good faith, seek to obtain a preference by being first in the race of diligence, and such provisions do not affect a lien obtained by a landlord by the levy of a distress warrant for past due rent under a lease giving the landlord a right of lien and to distrain for rent in arrears, which was entered into in good faith and not in contemplation of bankruptcy; such lien being one which is preserved by section 67d.

CARRIERS.

Carrier and Passenger: Relation

The United States Circuit Court of Appeals, Sixth Circuit, decides in *Clough* v. *Grand Trunk Western Ry. Co.*, 155 Fed., 81, that where a carrier leased motive power, the use of its tracks, and train operatives to a circus company, under contract exempting the carrier from liability for all injuries, the relation of passenger and carrier did not exist between the railroad company and an employe of the circus company, travelling solely by virtue of his employment, who was not a party to such transportation contract, so as to entitle such employe to recover against the railroad company for injuries sustained in a collision between two sections of the circus train. See also note to *Chamberlain* v. *Pierson*, 31 C. C. A., 164.

Expulsion of Passenger

It is decided by the Supreme Court of Georgia in *Baldwin* v. *Seaboard Air Line Ry. Co.*, 58 S. E. 35, that a passenger on a railway train who had paid his fare to a given city, which was under quarantine regulations, and who, when near the end of his journey left the train at a station on the railway line, in obedience to the order of a quarantine or health officer, who told him that he would not be allowed to ride on the train into the city, but must leave it at that station, has no cause of action against the railway company for a wrongful expulsion from its train, although the conductor pointed him out to the health officer, and, after knowledge of such officer's order to the passenger, did not interfere to prevent its execution.

Liability of First Carrier

The Supreme Court of Oklahoma holds in *St. Louis & S. F. R. Co.* v. *McGivney*, 91 Pac. 963, that if freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, the shipper may demand satisfactory information from the first carrier that the injury or loss, did not occur on its line, and if such carrier fails to furnish within a reasonable time the proof, in its possession or under its control, tending to show that it was not responsible for the injury or loss, it will be held liable therefor, regardless of whether or not it was in fact re-

CARRIERS (Continued).

sponsible for such injury or loss. Compare *Farmington Mercantile Co.* v. *Chicago B. & Q. R. Co.,* 166 Mass., 154.

Limiting Liability

In *Donlon Bros.* v. *Southern Pac. Co.,* 91 Pac. 603, the Supreme Court of California decides that the court, in determining whether a contract of carriage, which stipulates that the carrier shall not be liable for any damage not caused by its gross negligence, and that the amount of recovery shall be adjusted on the basis of value not exceeding the declared value, based on a consideration of a rate of transportation lower than the rate otherwise would have been, is not in conflict with a statutory provision that a carrier cannot be exonerated from liability for gross negligence, and the contract, if freely made, limits the recovery for damages resulting from gross negligence. One judge dissents. Compare *Calderon* v. *Atlas S. S. Co.,* 69 Fed. 574.

C. O. D. Shipment

In *Danciger et al.* v. *Wells, Fargo & Co.,* 154 Fed. 380 the United States Circuit Court, W. D. Mo. W. D., decides that there is no common-law duty resting upon an express company to act as collection agent of the shipper and require payment for the goods as a condition of their delivery; but such obligation, if assumed, arises only from an independent contract, express or implied, which the company is at liberty to refuse to make in any particular case, notwithstanding any usage or custom it may have established or followed, which cannot enlarge its legal duty as a carrier Compare *McNichol* v. *Pac. Express Co.* 12 Mo. App. 401.

CONSTITUTIONAL LAW.

Binding Subsequent Legislatures

It is frequently a question of difficulty how far a Legislature can act so as to bind a subsequent Legislature: in other words to what extent a corporation can avail itself of the prohibition against the impairment of the obligation of contracts where its grants or privileges depend upon the gift of the Legislature. One phase of this interesting question appears in

CONSTITUTIONAL LAW (Continued).

Commonwealth v. *Broad Street Rapid Transit Railway Co.*, 219 Pa., 11, where it is decided that a Legislature cannot grant away the State's right of eminent domain so as to bind future Legislatures. In this connection see *Metropolitan City Ry. Co.* v. *Chicago West Division Ry. Co.*, 87 Ill., 317.

CORPORATIONS.

Foreign Corporations; Doing Business

An important decision with respect to compliance with state statutes before foreign corporations are permitted to do business therein appears in *Pittsburg Const. Co.* v. *West Side Belt R. Co. et al.*, 154 Fed., 929, where the United States Circuit Court of Appeals, Third Circuit, decides that under the Pennsylvania Act of April 22, 1874 (P. L. 108), which provides that it shall be unlawful for a foreign corporation to do any business in the state until it shall have registered and complied with certain other requirements to bring it within the jurisdiction of the courts in the state, and also makes it a criminal offense for any officer or agent to transact any business within the state for a foreign corporation which has not complied with its requirements, a contract entered into in Pennsylvania by a foreign corporation which had not at the time complied with the statute to construct a railroad within the state is illegal and void, and no action can be maintained thereon, either against the other party or a guarantor to recover the contract price of work done thereunder, although the corporation complied with the statute prior to the doing of the work. The general principle is stated to be that whether an action is grounded upon an illegal contract depends upon whether proof of such contract is necessary to establish the cause of action alleged. If so, the court will not enforce it nor any alleged rights arising out of it. See in this connection notes to *Wagner* v. *J. & G. Meakin*, 33 C. C. A., 585; and *Ammons* v. *Brunswick-Balke Collender Co.*, 72 C. C. A. 622.

CORPORATIONS (Continued).

Proceeding to Dissolve

The Supreme Court of Alabama decides in *Central Land Co. et al.* v. *Sullivan,* 44 So. 644, that on a bill by a stockholder to distribute a corporation's assets, averments that no meeting had been held within five years, that no officer or agent resided in the state, and that the business for which the corporation was organized had never been attempted, sufficiently show an abandonment of their duties.

Consolidation

A very important decision is handed down by the Court of Chancery of New York in *Colgate et al.* v. *United States Leather Co. et al.,* 67 Atl. 657 where it is held that one purchasing stock for a corporation organized for a specified period, cannot object to its subsequent exercise, in a legal manner, of the power to consolidate with another corporation, where the power existed at the time of the purchase but was conferred subsequent to its organization, but the right to object to the consolidation belongs only to the persons who were shareholders to consolidate was given. The case is very carefully considered and will no doubt prove an important authority in corporation law. It is worthy of special study. See in this connection *Sparrow* v. *E. & C. R. R. Co.* 7 Ind., 369.

CRIMINAL LAW.

Former Conviction: Effect

In *People* v. *Grill,* 91 Pac. 515, the Supreme Court of California decides that where the accused after having been convicted of murder in the first degree and sentenced to life imprisonment was granted a new trial, on his application, at which he was again convicted of the same offense, his former conviction and sentence was no bar to a sentence of death on the second conviction. Compare *People* v. *Gordon,* 99 Cal. 232.

DISCOVERY.

Inspection of Corporation Books

The Supreme Court of New Hampshire decides in *Hub Const. Co.* v. *New England Breeders' Club et al.,* 67 Atl. 574 that a creditor of a corporation being absolutely entitled to inspect books and records of the corporation relating to his claim, it was no answer to

DISCOVERY (Continued).

his exercise of such right that the documents sought to be inspected in themselves might not be admissible in evidence in a proceeding to enforce his claim.

DISTRICT OF COLUMBIA.

The United States Circuit Court, S. D. New York, decides in *Lyons* v. *Bank of Discount of City of New York,* 154 Fed. 391, that the power given to Congress by the Constitution, to legislate for the District of Columbia, is not given to it as a local legislature, but as the legislature of the United States, and laws enacted under such power are laws of the United States, and enforceable as such throughout the Union. Compare *Horner* v. *United States,* 147 U. S. 449.

Legislative Power of Congress

EMINENT DOMAIN.

In *Portland & Seattle Ry. Co.* v. *Ladd et al.,* 91 Pac. 573 the Supreme Court of Washington decides that where, in a proceeding to condemn land for a railroad right of way, defendants claimed injury to a quarry, and it appeared that the rock could not be quarried without injury to lands which defendants did not own, but which belonged to the railroad company, the court properly charged that, if the rock could only be profitably quarried without injury to the land owned by the railroad company, the jury should disregard all evidence of the value of the rock as a quarry. One judge dissents. Compare the very recent case of *In re Mantorville Ry. & Transfer Co.,* 112 N. W. 1033.

Compensation: Measure

EQUITY.

An important rule of equity pleading in connection with recent railway rate legislation appears in *St. Louis & S. F. R. Co.* v. *Hadley,* 155 Fed., 220, where the United States Circuit Court, W. D. Missouri, decides that where suits by railroad companies to restrain the enforcement of a state statute fixing

Pleading: Supplemental Bill

EQUITY (Continued).

freight rates, on the ground that it was confiscatory and unconstitutional, were pending in a federal court at the time of the enactment of a second statute fixing passenger rates, the question of the constitutionality of the second act may properly be raised and determined in the pending suits on supplemental bills.

FOREIGN CORPORATIONS.

In *British-American Mortgage Co.* v. *Jones,* 58 S. E., 417, the Supreme Court of South Carolina decides that a foreign corporation, whose business it is to loan money on real estate mortgages, does business in the State when it pays in New York a draft attached to a note and mortgage executed in South Carolina on lands in the state on application forwarded by resident borrower. Herewith compare *Chatanooga National B. & L. Ass'n.* v. *Denson,* 189 U. S. 408.

Doing Business

INJUNCTIONS.

A very important case with respect to the limits within which Courts will act to restrain the use or communication of trade secrets appears in *Vulcan Detinning Co.* v. *American Can Co. et al.,* 67 Atl. 339. The facts were as follows: The complainant purchased from a concern in Holland a process for the successful detinning of tin scrap which was unknown in this country, the secret of which was zealously guarded. After the success of the process had been demonstrated, one of the complainant's original directors, charged as such with the duty of secrecy, and who, held in individual trust for the complainant a copy of the formula of its process, became the president of the defendant corporation, and with the assistance of certain discharged employes of the complainant installed for the defendant corporation as a competitor of the complainant the process so purchased by the latter. Upon a bill filed to

Trade Secrets

INJUNCTIONS (Continued).

enjoin this competition and to restrain the further publication of the complainant's process—it is held. (a) That the quondam director of the complainant should be enjoined because of his breach of trust. (b) That the defendant corporation should be enjoined, because the knowledge of its president was imputable to it. (c) That the discharged employes of the complainant should be enjoined. See *Stone* v. *Goss,* 65 N. J. Eq. 756, 63 L. R. A. 344.

Personal Rights

The United States Circuit Court, E. D. Pennsylvania, decides in *Von Thodorovich* v. *Franz Josef Beneficial Ass'n,* 154 Fed. 911, that the right of the Emperor of Austria-Hungary to restrain a beneficial association, doing business in the United States, from using his name and portrait in advertising its business, because such use is offensive to the Emperor, is personal to him, and cannot be availed of in a suit in the federal court for such relief by the imperial and royal consul of such country residing in the United States. See in this connection *The Anne,* 3 Wheat. 435.

JUDGMENT

Res Judicata

The Supreme Court of South Carolina holds in *Kirven* v. *Virginia-Carolina Chem. Co.,* 58 S. E. 424 that a judgment in the United States court on a note for fertilizers is not res judicata in an action in a state court for damages to defendant's crops, caused by the use of such fertilizer, where the same question was raised in the United States court, but was withdrawn by consent of the court. The general rule being laid down to be that under the rulings of the United States Supreme Court, a judgment is not res judicata in a second action on a different cause of action, unless the question was actually litigated in the original action. Two judges dissent. See in this connection *Cromwell* v. *Sac County,* 94 U. S., 351.

LOTTERIES.

In *Waite* v. *Press Pub. Ass'n.*, 155 Fed. 58, the United States Circuit Court of Appeals, Sixth Circuit, decides that a guessing contest prior to the presidential election of November, 1904, by which defendant agreed to give $10,000 to the person who would make the nearest correct estimate of the total popular vote to be cast for the office of President of the United States, on November 8, 1904, and $5,000 for the second nearest correct estimate, persons filing guesses being required to pay small sums as a subscription to a periodical named in the advertisement, constituted a lottery in violation of the federal laws and also of a State statute, providing that every person who shall set up or promote within the state any lottery or gift enterprise for money, or shall dispose of any property, real or personal, goods, chattels, or merchandise, or any valuable thing, by way of lottery or gift enterprise, shall be punished, &c. See also note to *MacDonald* v. *United States*, 12 C. C. A., 346.

Guessing Contest: Validity

MASTER AND SERVANT.

The Supreme Court of Pennsylvania decides in *Corgan* v. *George F. Lee Coal Co.*, 219 Pa., 386 that where a person is employed by a mining company as foreman "for so long a time up to five years that he satisfactorily performs his duties as foreman," the company has the absolute right, whenever it becomes in good faith dissatisfied with the services of the foreman, to discharge him; and if the company discharges him for a cause assigned and not sufficient, and it appears that at the time the company had the right to discharge him for another cause, such discharge will not be unlawful because a wrong reason had been given for it. It is further held that the master is not bound to give any reason for the dismissal at the time, and if he does, he is not hereby estopped from setting up any other, or different cause, which really existed when the servant was discharged. Compare *Koehler* v. *Buhl*, 94 Mich. 496.

Dismissal of Servant

MORTGAGES.

The Supreme Court of California decides in *Cory* v. *Santa Ynez Land & Imp. Co. et al.,* 91 Pac. 647, that where a mortgagor places the mortgagee in possession of mortgaged premises as additional security, the mortgagee thereby acquires the right to retain possession as long as the secured debt is unpaid, though foreclosure be barred by limitations. Compare *Spect* v. *Spect,* 88 Cal., 440, 13 L. R. A., 137.

Mortgagee in Possession

RAILROADS.

In *Durden et al.* v. *Southern Ry. Co.,* 58 S. E. 299 the Court of Appeals of Georgia holds that in the absence of charter limitations, contractual obligations, rule of the railroad commission, or statutory enactment to the contrary, a railway company may exercise its discretion in removing a side track or spur at which it has been accustomed to receive and deliver freights as a common carrier. Compare *N. Pac. R. Co.* v. *Washington Territory,* 142 U. S. 492.

Shipping Facilities

RECEIVERS.

In *Spence* v. *Solomons Co. et al.,* 58 S. E. 463, the Supreme Court of Georgia decides that where money is held by a receiver in a court of equity, which by decree is payable to the plaintiff, it is erroneous for the chancellor, upon application of a general creditor of such plaintiff who has no lien by judgment or otherwise, nor any interest in the fund, either legal or equitable, to order the same held by the receiver until such creditor can institute and prosecute a suit for the recovery of a judgment. Compare *Peyton* v. *Lamar,* 42 Ga., 131.

Fund in Receiver's Hands

RELIGIOUS SOCIETIES.

An interesting case very carefully and thoroughly considered and dealing with the differences between the branches of the Prebyterian Church appears in *Mack et al.* v. *Kime et al.,* 58 S. E., 184 where the Supreme Court of Georgia holds that a voluntary religious society, which constitutes a subordinate

Ecclesiastical Tribunals

RELIGIOUS SOCIETIES (Continued).

part of a religious organization having established tribunals authorized, either expressly or impliedly to decide all questions of faith, discipline, rule, or ecclesiastical government, is bound by the decisions of all such tribunals on all questions determined by them within the respective jurisdictions of each. In such cases, where a right of property asserted in a civil court is dependent on a question of doctrine, discipline, ecclesiastical law, rule, custom, or church government, and that question has been decided by the highest tribunal within the organization, to which it has been regularly and properly carried, the civil courts will accept that decision as conclusive, and be governed by it in its application to the case before it.

STATUTE OF FRAUDS.

In *Stewart et al.* v. *Smith et al.,* 91 Pac. 667, the California Court of Appeals, of the Third District, decides that a contract by which testatrix, in consideration of a transfer of certain property to her by her children, agreed to make a will, leaving at her death the whole of the property or residue thereof and all increase and accumulations to her children, share and share alike, and to execute a will so providing was not within the statute of frauds as an agreement not to be performed within a year.

Contract to Will

TRESPASS.

In *Hadwell* v. *Righton,* (1907) 2 K. B. 345 it appeared that the plaintiff was riding a bicycle on a highway upon the footpath of which were some fowls belonging to the defendant. As the plaintiff got abreast of the fowls a dog belonging to a third person frightened the fowls, one of which flew into the spokes of the machine, causing it to upset, whereby the plaintiff suffered personal injury and the bicycle was damaged. Under these circumstances the Court of King's Bench holds that even if the fowl was not lawfully on the highway the circumstances under which the accident happened prevented the damage

Damages: Remoteness

TRESPASS (Continued).

from being the natural consequences of its presence there, and that the plaintiff could not recover. It is queried by the Court whether the occupiers of land adjoining the highway are not entitled to allow their poultry to stray about the highway.

TRIAL.

The Court of Appeals of Georgia decides in *E. Van Winkle &c. Works* v. *Pittman et al.*, 58 S. E. 379 that the right to open and conclude in a jury trial is of great importance; and the plaintiff should not be deprived of this right, unless the defendant, in his pleadings, before the introduction of any testimony by the plaintiff, admits facts authorizing, without further proof, a verdict in the plaintiff's favor for the full amount claimed in the declaration. Compare *Buchanan* v. *McDonald*, 40 Ga., 288.

Right to Open and Close

USURY.

The Supreme Court of Washington decides in *Grubb* v. *Stewart, et al.*, 91 Pac. 562 that where defendants were not creditors nor in privity with an investment company which was complainant's debtor under a contract on which complainant's claim was based, they could not avail themselves of the defense that the contract sued on was usurious; such defense being personal to the debtor and his privies. Compare *Lamoille County Nat. Bank* v. *Bingham*, 50 Vt. 105.

Persons Entitled to Plead

WILLS.

An interesting situation is disclosed in *Wagstaff* v. *Jalland*, (1907) 2 Ch. 35 where it appeared that a testator gave all his furniture and household goods and effects at his two residences to his "dear wife Dorothy Josephine Wagstaff," and, after giving various pecuniary legacies, he devised and bequeathed the residue of his real and personal estate to his said wife and two others upon

Construction

WILLS (Continued).

trust for sale and conversion, and to invest and pay the interest and annual produce thereof to " my said wife during her life, if she shall so long continue my widow, for her own use and benefit and upon or after her decease or second marriage " to stand possessed of the residuary trust estate in the events which had happened, upon trust for the plaintiff. The lady whom the testator called his wife, and with whom he went through the ceremony of marriage in 1893, was at that time the wife of one X., to whom she had been married in 1884, and who was still living.

After the testator's death in 1903 the lady confessed to bigamy and was sentenced. The plaintiff claimed to be now entitled to the whole residuary estate. Under these decisions the English Chancery Court holds that the testator meant to use the word " widow " in a secondary sense, and upon the true construction of the will the lady was entitled to a life interest in the residuary estate, unless and until she contracted a marriage subsequent to the death of the testator. See in this connection *Jones' Estate,* 211 Pa. 364.

WITNESSES.

Privilege: Evidence of Attorney

The Supreme Court of Appeals of West Virginia holds in *Kirchner* v. *Smith et al.* that an attorney employed by two or more persons to give professional advice or assistance in a matter in which they are mutually interested can, on litigation subsequently arising between such persons or their representatives, be examined as a witness, at the instance of either, as to communications made when he was acting as attorney for all, although he could not discuss such communication in a controversy between his clients, or either of them, and third persons. Compare *Sparks* v. *Sparks,* 51 Kans. 195.

Use of Diagrams

In *State* v. *Harrison,* 58 S. E., 754 the Supreme Court of North Carolina decides that a witness may be allowed to use a map to explain his testimony though the map is not admitted in evidence.